

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Andrew Marshall McElrath,)	
)	
Plaintiff,)	
)	Civil Action No. 8:23-cv-3718-BHH
v.)	
)	
Mark Zuckerberg; MetaQuest; and)	
Facebook, Inc.,)	<u>ORDER</u>
)	
Defendant.)	
_____)	

This matter is before the Court upon Plaintiff Andrew Marshall McElrath's ("Plaintiff") pro se complaint filed pursuant to 42 U.S.C. § 1983. On August 7, 2023, Defendants filed a motion to dismiss for failure to state a claim. (ECF No. 11.) The matter was referred to a United States Magistrate Judge for preliminary determinations in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C.

On August 8, 2023, the Magistrate Judge issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising him of the dispositive motion procedures and of the need for him to file a response to Defendants' motion. (ECF No. 13.) The order also instructed Plaintiff that if he failed to respond adequately, Defendants' motion may be granted. Despite the Magistrate Judge's specific instructions, Plaintiff failed to respond to Defendants' motion. Additionally, the *Roseboro* order was returned to the Court as undeliverable, with it appearing that Plaintiff is no longer at Livesay Correctional Institution, but Plaintiff has not provided the Court with an updated address.

In light of the foregoing, on September 13, 2023, the Magistrate Judge ordered Plaintiff to advise the Court whether he wished to proceed with this case and to respond

to Defendants' motion by October 13, 2023. (ECF No. 18.) Plaintiff again failed to respond.

As such, on October 20, 2023, the Magistrate Judge issued a Report and Recommendation ("Report"), outlining the issues and recommending that the Court dismiss this action with prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, in accordance with the factors set forth in *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); *Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989); and *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy. (ECF No. 22.) To date, no objections have been filed. Furthermore, on November 1, 2023, the Magistrate Judge's Report was returned as undeliverable, and Plaintiff has not provided the Court with an updated address.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. See *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made. In the absence of specific objections, however, the Court reviews the matter only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005)

(stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Here, because Plaintiff has failed to keep the Court informed of a current address; has failed to comply with the Magistrate Judge’s orders; has failed to respond to Defendants’ motion to dismiss; and has not filed objections, it appears that he no longer wishes to pursue this action. Having reviewed the Magistrate Judge’s findings and recommendations for clear error, the Court finds none and agrees with the Magistrate Judge. Therefore, the Court hereby adopts the Magistrate Judge’s Report (ECF No. 22) and dismisses this action with prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and in accordance with the factors outlined in *Davis*, *Ballard*, and *Chandler Leasing*.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

November 8, 2023
Charleston, South Carolina